

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>STANDISH K. PENTON, JR.</p> <p>v.</p> <p>Respondent:</p> <p>JEFFERSON COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 49424</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on December 12, 2008, Karen E. Hart and MaryKay Kelley presiding. Petitioner was represented by Thomas E. Downey, Jr., Esq. Respondent was represented by James Burgess, Esq. Petitioner is protesting the 2007 actual value of the subject property.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**5200 West Coal Mine Avenue, Littleton, Colorado
(Jefferson County Schedule No. 013095)**

The subject property is a residential/agribusiness mix located on a 3.844-acre site with the following improvements: a 1,518-square-foot owner-occupied residence built in 1902; a 1,182-square-foot tenant-occupied residence built in 1920 with a 1957 addition; a 16,128-square-foot indoor riding arena with 19,944 square feet of 51 perimeter stalls built in 1999; and a 1,937-square-foot barn built in 1902 and used for storage.

Respondent assigned an actual value of \$1,038,200.00 for tax year 2007 with 11% allocated to residential and 89% to agribusiness but is recommending a change to an 8% residential allocation and 92% agribusiness. Petitioner is requesting a value between \$800,000.00 and \$1,038,200.00 with 70% allocated to residential and 30% to agribusiness.

Petitioner purchased the subject property in 1995, at which time improvements included the two residences, the old barn, and loafing sheds. The loafing sheds were later demolished. The arena and indoor stalls were built in 1999/2000 following re-zoning to PD, which permits 50 horses and up to three horse shows annually. The business operates as Normandy Farms and Stables, Inc.

Petitioner described the agribusiness as horse boarding with an estimated 80% occupancy in 14-15 years of operation and use of the facility by independent contractors paying 15% of lesson revenue. Mr. Stan Penton and Mrs. Christine Penton work a combination of 120 hours per week at the business, neither drawing a salary. Mr. Penton testified that the business has been adversely impacted by drought, commodity prices, bedding prices, water/power prices, and a declining number of trainers.

Petitioner’s Case

Petitioner contends that the 2007 actual value of the subject property should be based upon the highest and best use for residential redevelopment.

Mr. Penton reported the following income and expense data, blaming declining income on the loss of education programs, horse leasing, horse shows, laundry revenue, and a decreasing numbers of trainers.

	<u>2004</u>	<u>2005</u>	<u>2006</u>
Gross Income	\$ 335,514.81	\$ 316,799.52	\$ 309,771.40
Expenses	<u>\$(309,215.58)</u>	<u>\$(274,462.20)</u>	<u>\$(301,974.63)</u>
Net Income	\$ 26,299.23	\$ 46,087.32	\$ 7,796.77

Petitioner considers the highest and best use of the property to be redevelopment for residential use: the surrounding area is residential with homes valued between \$800,000.00 to \$1,500,000.00, current zoning allows for two residences of 5,000 square foot each on the site, and re-zoned development of five to eight single family sites is compatible with the surrounding area. Petitioner’s witness, Stanton E. Wagner, Certified General Appraiser, is of the opinion that existing improvements carry minimal contributory value, building the arena was a financial mistake, and the agribusiness does not generate sufficient income to justify its use. Further, potential commercial purchasers interested in income potential would compare the business to larger horse facilities such as Columbine, a 14-acre facility with more pasture, multiple enclosed arenas, access to riding trails, and more parking

Based on highest and best use as residential development, Mr. Wagner presented an indicated value for the subject property of \$1,082,100.00.

Based on the market approach, Mr. Wagner presented one comparable sale immediately east of the subject property on 5.95 acres with two residences and miscellaneous loafing sheds and stalls. It sold June 6, 2006 for \$1,675,000.00 or \$281,512.00 per acre and was subsequently subdivided into 12 single family sites. Value for the subject property was indicated at \$1,082,100.00 based on \$281,512.00 per acre for the subject’s 3.844 acres. Construction of two \$500,000.00 to \$600,000.00 homes supports the estimated value of \$1,082,100.00.

Mr. Wagner presented an income approach for the agribusiness to demonstrate its minimal contribution to the property. It included income and expense data for years 2003 through 2006 based on Petitioner's tax returns with a tax-loaded capitalization rate of 13%. Income included house rental, owners' salaries, and miscellaneous items. The approach concluded to agribusiness values of \$61,850.00 (2003), \$316,330.00 (2004), \$392,230.00 (2005), and \$209,530.00 (2006). The four-year average was \$244,985.00, and the two base years ranged from \$209,530.00 to \$392,230.00. Mr. Wagner argued that a prudent buyer would not pay more than \$300,000.00 for the subject business.

Petitioner concluded that the value of the agribusiness (\$300,000.00) was only 30% of total value (\$1,082,100.00) and that the residential allocation was, therefore, 70%. The allocation was supported by Mr. Penton's estimate that the indoor and outdoor arenas, barn, and parking spaces occupy approximately 25% of the property.

Respondent's Case

Respondent contends that the subject property's equestrian business is viable, profitable, and marketable to another owner/user and that residential redevelopment is speculative and should not be considered.

Respondent presented an indicated value of \$1,198,243.00 for the subject property: \$982,992.00 for improvements and \$215,251.00 for land.

Based on the market approach for the residential improvements, Darla Jaramillo, Certified General Appraisal for the Jefferson County Assessor's Office, presented three agribusiness sales and extracted the value of the two houses, concluding to a value of \$144,000.00 for the subject's two houses.

Based on the cost approach, Ms. Jaramillo presented indicated values of \$830,960.00 for the arena and \$8,032.00 for the old barn, totaling \$838,992.00.

Based on the market approach, land value was estimated at \$56,000.00 per acre or \$215,264.00 (\$215,200.00 rounded). Of 17 vacant agribusiness land sales, Ms. Jaramillo gave most weight to four sales ranging in size from 1.042 to 4.737 acres and in price from \$34,853.00 to \$195,172.00 per acre.

Ms. Jaramillo presented residential and agribusiness allocations as follows: 14.65% for residential land and improvements, 85.35% for agribusiness land and improvements. Respondent relied on the allocation method defined by statutory framework which dictates that allocation is determined by the proportion of indicated improvement values to each of the components. Respondent recommended the following allocations in order to correct an error in the original calculations: the indicated residential improvement value of \$144,000.00 is 14.65% of the total indicated improvement value (\$982,992.00), thus the residential land value is similarly calculated at 14.65% of total land value (\$215,864.00) or \$31,624.00; indicated agribusiness improvement value of \$838,992.00 is 85.35% of the total indicated improvement value (\$982,992.00), thus the

agribusiness land value is similarly calculated at 85.35% of total land value (\$215,864.00) or \$184,240.00.

Conclusions

Petitioner and Respondent cited *Board of Assessment Appeals v. Colorado Arlberg Club*, 762 P.2d 146 (Colo. 1988) in support of their respective cases. Petitioner argued that a highest and best use as redevelopment to residential property was a reasonable future use. Respondent argued that the subject's current use is its highest and best use and that redevelopment to residential property is a speculative future use that may not be considered. The Board agrees with Respondent.

The highest and best use of the subject property must be legally permissible, physically possible, financially feasible, and result in maximum profitability.

Petitioner considered multiple-site redevelopment to be physically possible due to the subject's acreage and recent development on adjoining land. However, no legal or financial research was presented, nor has there been submission to the planning and zoning department or research into either the cost of demolition of all improvements or the cost of infrastructure and utilities.

The Board agrees with both parties that the subject's agribusiness cannot compare with larger commercial equestrian enterprises that might appeal to potential investor-purchasers. However, the existence of the income-producing 36,072-square-foot arena and stalls cannot be ignored. The Board is convinced that the business provides sufficient income for a purchaser interested in a business venture to support an equestrian lifestyle. Petitioner's income and expense statement indicates a viable business venture, net income being \$26,299.23 for 2004, and \$46,087.32 for 2005.

Therefore, the Board determines that the highest and best use of the subject property is its current use as a residential/agribusiness property and not redevelopment for residential use.

Petitioner presented sufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax year 2007.

The Board concludes to a land value of \$56,000.00 per acre or \$215,264.00. Although Respondent provided no discussion for the concluded value, Petitioner provided no alternate data. The Board finds Respondent's concluded land value reasonable.

The Board finds the value of the two residential improvements to be \$144,000.00. The Board did not give weight to Petitioner's comparable sale located adjacent to the subject, since the property was redeveloped into multiple residential sites after the purchase. Although the Board did not find Respondent's conclusions well supported, Petitioner provided no alternative market data to value the subject property according to its actual use.

The Board is not convinced that Petitioner's income approach is the best indicator of value for the agribusiness improvements: income and expense data for similar facilities was not provided, and the subject's business value was presented but might not equate to market value. The Board

finds Respondent's cost approach more appropriate but considers application of 20% economic obsolescence for non-leased stalls to be appropriate.

Arena (\$830,960.00 minus 20% economic obsolescence)	\$ 664,768.00
Old barn	\$ <u>8,032.00</u>
Value of agribusiness improvements	\$ 672,800.00
Value of residential improvements	\$ 144,000.00
Total improvement value	\$ 816,800.00
Percentage of agribusiness improvements	82%
Percentage of residential improvements	18%
Land	\$ 215,264.00
Agribusiness improvements	\$ 672,800.00
Residential improvements	\$ <u>144,000.00</u>
Total value	\$1,032,064.00

The Board finds that the land value of the property should be allocated between residential and agribusiness based on the proportion that the actual value of the improvements are allocated.

In the case of land containing more than one improvement, one of which is a residential dwelling unit, the determination of which class the land shall be allocated to shall be based upon the predominant or primary use to which the land is put in compliance with land use regulations. If multiuse is permitted by land use regulations, the land shall be allocated to the appropriate classes based upon the proportion that the actual value of each of the classes to which the improvements are allocated bears to the combined actual value of the improvements; the appropriate valuation for assessment ratio shall then be applied to the actual value of each portion of the land.

CRS § 39-1-103(9)(b).

The Board concludes that the 2007 actual value of the subject property should be reduced to \$1,032,064.00, with 82% or \$846,292.00 allocated to the agribusiness land and improvements and 18% or \$185,772.00 allocated to the residential land and improvements.

ORDER:

Respondent is ordered to reduce the 2007 actual value of the subject property to \$1,032,064.00, with 82% allocated to agribusiness and 18% allocated to residential.

The Jefferson County Assessor is directed to change his records accordingly.

APPEAL:

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of CRS § 24-4-106(11) (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation of the respondent county, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of CRS § 24-4-106(11) (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

CRS § 39-8-108(2) (2008).

DATED and MAILED this 4th day of March 2009.

BOARD OF ASSESSMENT APPEALS

Karen E Hart

Karen E. Hart

MaryKay Kelley

MaryKay Kelley

This decision was put on the record

MAR 04 2009

I hereby certify that this is a true and correct copy of the decision of the Board of Assessment Appeals.

Heather Flannery

Heather Flannery

